Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

C.W., By Her Guardian Ad Litem,
Loralyn McKinley, Esquire, Petitioner,

v.

Dolores Wasiek, Respondent.

On Petition for a Writ of Certiorari
to the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a State have a compelling interest in authorizing the sterilization of an adult with lifelong incapacity, and thus overriding her Fourteenth Amendment rights of bodily integrity and reproductive autonomy, when the individual is in no immediate danger of pregnancy and when there is no judicial finding that sterilization is the least restrictive alternative?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Lorrie McKinley, Esquire, Guardian Ad Litem for C.W., Petitioner,

v.

Dolores Wasiek, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Lorrie McKinley, Esquire, Guardian Ad Litem for C.W., respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania.

OPINIONS BELOW

The en banc opinion of the Superior Court of Pennsylvania (App. at 3, infra),[1] is reported at 640 A.2d 427. The

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1 The Appendix is designated herein as "App. at ___."

panel opinion of the Superior Court of Pennsylvania is reported at 1993 Pa. Super. LEXIS 85 (App. at 100, infra). The en banc opinion of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, Pennsylvania (App. at 202, infra), is not reported. The opinion of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, Pennsylvania (App. at 227, infra) is reported at 10 Fid.2d 79.

JURISDICTION

The Supreme Court of Pennsylvania declined to review the judgment of the Superior Court of Pennsylvania on August 17, 1994 (App. at 1, infra). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the Constitution, U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This petition arises out of litigation initiated by Respondent, Delores Wasiek, seeking authority to surgically sterilize her daughter, C.W. C.W. is a woman with mental retardation who has never been capable of consenting to the procedure. Petitioner, C.W.'s court-appointed guardian ad litem, opposes the request

because the State has no compelling interest in authorizing the sterilization of a person not facing an imminent risk of pregnancy and because sterilization is not the "least restrictive" means of contraception for C.W. She contends that sterilization thus violates C.W.'s Fourteenth Amendment rights to bodily integrity and reproductive autonomy.

A. C.W.

C.W. is a twenty-six year old woman who has moderately severe retardation. She also has grand mal epilepsy and cerebral palsy. C.W. is mute and communicates in sign language and through noises that can be interpreted by those who know her.

C.W. has resided in a Community Living Arrangement ("CLA") since she was twelve years old. The CLA is highly structured and, because C.W. has a serious and

unpredictable seizure condition, she receives more intensive supervision than the other residents. Since 1990, C.W. has resided in a CLA with only female residents and staff. She is never permitted outside the CLA without a staff escort and she has never eloped.[2] C.W.'s room has a monitor that enables the CLA staff to be aware of any sounds coming from within. C.W. spends every other weekend in the custody of her parents, who also ensure that C.W. is not left alone.[3]

There is no evidence that C.W. has ever engaged in sexual activity with another person. She is not capable of consenting to a sexual relationship and could only become pregnant if she were

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2 Trial Transcript, hereafter "Tr." at 205 and 332.

3 Tr. at 76-77.

victimized. Pregnancy would not be medically advisable for C.W. However, because of the intense supervision she receives, the likelihood of C.W. being victimized and thereby becoming pregnant is slight.[4]

To date, a program of education, supervision, and training have successfully protected C.W. from sexual victimization and pregnancy. No changes are planned for C.W. that would limit the program's effectiveness.[5] Moreover, hormonal contraceptives, like birth control pills, have not been tried, and

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4 Tr. at 250, 292-3, Tr. 8/17/89 at 65.

5 Tr. at 75, 293.

there is no medical proof that they would be inappropriate for C.W.[6]

B. Proceedings Below And Presentation Of The Federal Question

This litigation began when respondent petitioned the Orphans' Court of Philadelphia County for appointment as C.W.'s guardian with specific authority to consent to a tubal ligation to sterilize her. Petitioner, as C.W.'s court-appointed guardian ad litem, has argued that surgical sterilization implicates C.W.'s Fourteenth Amendment rights of bodily integrity and reproductive autonomy. At every juncture, Petitioner has challenged the appropriateness of sterilization because C.W. is in no immediate danger of pregnancy and because sterilization is not

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6 Tr. at 113-114, 231, 253-4, Tr. 8/17/89 at 67, 75; Guardian's Exhibit 11.

the least invasive means for preventing C.W. from becoming pregnant. This dispute has divided every appellate court to consider it.

Petitioner first raised the federal question in the trial court by arguing that sterilization implicates C.W.'s Fourteenth Amendment rights, that those rights were not diminished by her incapacity, and that the State, acting through the court, could not authorize sterilization absent a compelling justification. She contended that since C.W. is not sexually active and lives in a very protective environment, sterilization is unnecessary. Moreover, Petitioner argued, where non-invasive means for preventing

pregnancy like birth control pills[7] could be used, surgical alternatives would unduly infringe upon C.W.'s Fourteenth Amendment rights. App. at 317 **et seq.**

The trial court did not address C.W.'s constitutional right to bodily integrity, identified no compelling reason why sterilization was required, and made no effort to base its opinion upon the least restrictive alternative. Indeed, the trial court acknowledged the remoteness of the risk of pregnancy, Tr. at 660, and dismissed C.W.'s constitutional right to reproductive autonomy as "illusory." App. at 315. It concluded that C.W.'s best interests would be served by "maximum"

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7 Those supervising the CLA where C.W. lives already see that she takes seizure medications at least daily. They could easily include birth control pills in her existing regimen.

pregnancy prevention, whether or not least restrictive. App. at 295. Based on this conclusion, the trial court appointed Respondent as C.W.'s guardian with specific authority to consent to a tubal ligation. Petitioner appealed to the Orphan's Court en banc,[8] which affirmed without discussing C.W.'s Fourteenth Amendment rights. Judge Louis Bruno, in his dissenting opinion, made the first judicial reference to the Fourteenth Amendment issues:

> This woman's constitutional rights to privacy and bodily integrity are being totally trampled upon because the hearing judge and my colleagues are focusing on the easiest method of pregnancy prevention rather than the protection of the physical person of this woman. . . . [I]t is absolutely not necessary to take the most extreme measure possible when it has not been

8 See App. at 330 for Petitioner's treatment of the federal question.

shown that other, more reasonable measures are unworkable. . . .

App. at 222.

Petitioner appealed to the Pennsylvania Superior Court, and a three-judge panel reversed by a vote of two-to-one. [9] The majority adopted Petitioner's argument:

> The Supreme Court of the United States has recognized a fundamental constitutional right to privacy, which encompasses an individual's right to make autonomous decisions regarding procreation (citations omitted). The Supreme Court has also held that an individual's fundamental right to privacy cannot be diminished due to that person's incompetence. Cruzan v. Mo. Dep't of Health, 497 U.S. 261, 110 S.Ct. 2481, 111 L.Ed. 224 (1990). Since a fundamental right is implicated in the decision to impose sterilization upon an individual, the state must demonstrate a compelling state interest before it may constitutionally deprive an individual of that

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9 Petitioner's articulation of the federal question and argument in support thereof is contained in the Appendix at 341.

> right. See, e.g., Eisenstadt v. Baird, at 448, 92 S.Ct. at 1035, 31 L.Ed.2d at 359. If a less restrictive alternative is available that can achieve the same stated goal without depriving an individual of a fundamental right, it must be utilized (citations omitted).
>
> Based on these sound constitutional principles, and a long history of eugenic sterilization of the mentally retarded in the United States, courts in other jurisdictions, as well as our own, have held that sterilization of mentally retarded individuals implicates a fundamental right and requires that we impose the least restrictive alternative in seeking contraceptive measures for those individuals (citations omitted).

App. at 110.

> [W]e are constrained to conclude that tubal ligation has not been established as the least restrictive nor as the only practicable means of contraception available to C.W. Therefore, we conclude that the order of the trial court violates C.W.'s fundamental rights to privacy and bodily integrity.

App. at 115.

On reargument before the Superior Court En Banc, the court reversed itself

by a vote of 6-3 and reinstated the trial court's order.[10] The majority provided no analysis of the constitutional claim. Instead, it focused upon C.W.'s medical condition, and concluded that sterilization was in C.W.'s "best interest" and "not overly intrusive." App. at 63. The majority acknowledged that less restrictive alternatives had to be considered as part of the analysis, App. at 10, but utilized it only as one of several factors in determining C.W.'s "best interest." The majority made no finding that sterilization was the least restrictive alternative. Reiterating the panel majority's Fourteenth Amendment analysis, the three dissenting judges criticized the majority for "not

10 Petitioner resubmitted her Superior Court brief on reargument.

adequately address[ing] C.W.'s constitutional right to privacy, including the rights to bodily integrity and reproductive autonomy." App. at 73, et seq.

Petitioner sought discretionary review by the Pennsylvania Supreme Court. Review was denied on August 17, 1994. App. at 1.

REASONS FOR GRANTING THE PETITION

A. Involuntary Sterilization Implicates Fundamental Federal Constitutional Rights.

This case presents this Court with its first opportunity since 1927 to define the circumstances under which a woman with a life-long disability may be required to undergo compulsory surgical sterilization. In Buck v. Bell, 274 U.S. 200 (1927), this Court held that a State could surgically sterilize an involuntarily institutionalized eighteen-year-old woman, stating

that "three generations of imbeciles are enough." Id. at 207. Since 1927 this Court has stepped away from Buck v. Bell without ever overruling it. The largest single step was Skinner v. Oklahoma, 316 U.S. 535 (1942), in which this Court invalidated a statute permitting the sterilization of convicted felons, recognized that sterilization "touches a sensitive and important area of human rights" (id. at 536), and stressed the dangers inherent in the unchecked power to sterilize:

> Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands, it can cause races or types which are inimical to the dominant group to wither and disappear.

Id. at 541.

Subsequent to Skinner, this Court has explicitly recognized as fundamental an individual's right of procreative autonomy as part of the right to privacy. Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973); Planned Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976); Carey v. Population Services Int'l, 431 U.S. 678 (1978).

This Court has also held that an individual's incompetence does not diminish or limit privacy rights. Specifically, the right to bodily integrity, i.e., to be free from non-consensual bodily invasion, belongs to competent and incompetent individuals alike. Cruzan v. Missouri Department of Health, 497 U.S. 261 (1990); Youngberg v. Romeo, 457 U.S. 307 (1982).

Where government seeks to limit or restrain fundamental federal constitutional rights, this Court has required them to articulate compelling State interests and to pursue those interests through means which least restrict those rights. Shelton v. Tucker, 364 U.S. 479, 488 (1960). The Court has applied the least restrictive alternative standard to such diverse constitutional rights as free speech, Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), Lovell v. Griffin, 303 U.S. 444 (1938), religious exercise, Thomas v. Review Board of Indiana Employment Security Division, 450 U.S. 707 (1981), Sherbert v. Verner, 374 U.S. 398 (1963), and voting rights, Illinois Election Board v. Socialist Workers' Party, 440 U.S. 173 (1979).

The law concerning least restrictive alternatives emerged well after the Court in Buck v. Bell rejected the notion that sterilization of persons with retardation implicated substantive constitutional concerns. Since the issue has not been addressed by the Court since then, it has not had the opportunity to articulate the type of state interests which would justify authorizing sterilization under contemporary constitutional standards, or to decide whether the constitutional rights of people with disabilities are strong enough to shield them from governmentally authorized sterilizations where less invasive means of preventing pregnancy are available.

The issue of whether and to what extent the right to bodily integrity protects a person with mental incapacity from

surgical intrusions has implications extending far beyond the sterilization context. This Court is aware as a result of Cruzan that the difficult task of defining the parameters of the right to bodily integrity for people who are incapacitated has just begun, and that this question is one upon which the Court's guidance is critically needed. In Cruzan, the Court did not confront the circumstance presented here, in which the proposed subject of the surgical intrusion has never been capable of expressing a choice, and it was not called upon to decide whether, in that situation, the least restrictive alternative analysis should apply. This case gives the Court the opportunity to consider how persons who have experienced lifelong incapacity

are to be protected from unwarranted invasions of their bodily integrity.

B. This Court Should Resolve A Conflict Among The States On The Standard For Sterilization Of Persons With Mental Retardation.

Actions seeking the sterilization of individuals with incapacity are typically brought in State courts granted the authority to appoint guardians of the person of individuals. As a result, most of the law on when individuals may be sterilized has been developed by State courts. The failure of this Court either to explicitly overrule Buck v. Bell or to establish a clear standard for limiting the federal constitutional right of bodily integrity has permitted the States to establish a variety of inconsistent standards. As a result, they are difficult to categorize.

At least one State still permits sterilization in the public interest without regard to the interests of the individual, as permitted by Buck v. Bell, supra.[11] Many States have no articulated standard, either statutory or judicial, governing how court petitions for surgical sterilization are to be resolved,[12] and

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11 Mississippi (Miss. Code § 41-45-1 (1972 & Supp. 1991)). Ohio appears to follow suit. See In Re Simpson, 180 N.E. 2d 206 (1962). Guardians in Ohio have unfettered discretion to consent to sterilization on the part of their wards. Non-guardians require a court order. 51 Ohio Revised Code Ann. § 5123.86.

12 The following states have statutes or case law pertaining to the surgical sterilization of people with retardation, but articulate no standard: Delaware (16 Del. Code Ann. § 5703-7); Idaho (Idaho Code § 39-3903); Kentucky (33 Kentucky Revised Stat. Ann. § 387-660); Nevada (Nevada Revised Statutes, Chapter 139); South Carolina (Brode v. Brode, 298 S.E. 2d 443 (S.C. 1982)). Maryland, South Dakota, and Kansas prohibit the sterilization of a person with retardation who

(continued...)

several have no laws compelling judicial intervention at all.[13] Six States permit sterilization of an incompetent individual if sterilization is found to be in the best interests of the individual but do not require that sterilization be the

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12(...continued)
cannot consent to the procedure. Ann. Code of Maryland § 5-605; South Dakota Codified Laws 27A-12-3.20 and 59 Kan. Stat. Ann. § 3018.

13 These states have no statutory or case law standardizing sterilization decisions: Arizona, Illinois, Iowa, Louisiana, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, Wyoming, South Dakota, and Texas. Courts in two of these states, Texas and Missouri, have determined that in the absence of a specific statute conferring jurisdiction upon them, they will not consider petitions for sterilization. Frazier v. Levi, 440 S.W.2d 393 (Tex. Civ. App. 1969) and In Re MKR, 515 S.W. 2d 467 (Mo. 1974). The status of people with disabilities is unclear where compulsory sterilization is concerned, in the remainder of the states with no governing law.

"least restrictive alternative."[14] Another thirteen States, however, have held or recognized by statute that the Fourteenth Amendment's protection of procreative autonomy and bodily integrity requires proof that sterilization must not only be in the best interest of the

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14 Florida (West Florida Stat. Ann. § 744.3215(4)(e); Hawaii (30A Ha. Stat. Ann. Ch. 560); Indiana (P.S. by Harbin v. W.S., 452 N.E.2d 969 (Ind.1983)); New Hampshire (In re Penny N., 120 N.H. 269, 414 A.2d 541 (1980)); New Jersey (In re Grady, 85 N.J. 235, 426 A.2d 467 (1981)); Washington (In re Hayes, 608 P.2d 635 (Wash. 1980)). Arkansas and Utah utilize the substituted judgment analysis in place of the best interest test. See Arkansas Code § 20-49-101 and 20-49-201 and Utah Code § 62A-6-108-(1)(e)(1989). Some of these States consider whether sterilization is least restrictive as one factor in the best interest analysis, but do not require that the best interest decision rest upon it. This was the type of analysis utilized by the Pennsylvania court in this case.

individual but be the least restrictive alternative.[15]

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15 Alabama (Wyatt v. Aderholt, 368 F. Supp. 1383 (1974) (re: institutionalized people with retardation)); Alaska (Matter of C.D.M., 627 P.2d 607 (1981)); California (West Ann. Cal. Probate Code § 1950 (1991); Colorado (In the Matter of A.W., 637 P.2d 366 (1981)); Connecticut (Conn. Gen. Stat. Ann. § 45a-690(d)(4) (West 1981 & Supp. 1992)); Maine (34-B Maine Revised Stat. Ann. § 7001-17 (1988) as construed in In Re Debra B., 495 A.2d 781 (Me. 1985)); Minnesota (Minn. Stat. §525.56(4)(c) (West 1991), In the Matter of the Welfare of Hillstrom, 363 N.W.2d 871 (Minn. Ct. App. 1985); North Carolina (Matter of Truesdell, 313 N.C. 421, 329 S.E. 2d 630 (1985)); Oregon (Ore. Rev. Stat. §436.205(1)(1991)); Vermont (18 Vt. Stat. Ann. § 8711 (1987)); Virginia (Va. Code Ann. § 54.1-2977.A.3); West Virginia (9 West Virginia Code § 27-16-1(1966)); Wisconsin (In re Eberhardy, 307 N.W.2d (Wis. 1981)). Massachusetts utilizes the substituted judgment standard in place of the best interest test. Matter of Moe, 632 N.E.2d 712 (Mass. 1982). In Matter of Terwilliger, Pennsylvania required that sterilization be proven to be least restrictive. In the case at bar, however, this requirement was utilized as just one factor in the best interest analysis, leaving some doubt as to what the Pennsylvania standard actually is.

Thus, the States have, in their capacity to appoint guardians of the person, divided on the minimum substantive standard for governmental action that will infringe the federal constitutional right of bodily integrity and reproductive autonomy. Some states continue to permit sterilization in the interests of the public without regard to the interests of the individual. Of those states which have considered the issue, the principal division is between those states that require only that sterilization be found to be in the "best interests" of the individual and those that hold that federal constitutional rights require also that sterilization be the "least restrictive alternative" or "medically necessary."

Compare, for instance, the Pennsylvania decision below with Matter of

Truesdell, 63 N.C. App. 258, 304 S.E.2d 793 (1983), modified and affirmed, 313 N.C. 421, 329 S.E.2d 630 (1985). There, the North Carolina courts refused to authorize the sterilization of an eighteen year old woman with Down Syndrome. They held that the Fourteenth Amendment requires, for a sterilization order, a finding that there is a substantial likelihood that the respondent will voluntarily or otherwise engage in sexual activity likely to cause impregnation" and that "the proposed method of sterilization entails the least invasion of the body of the respondent." 63 N.C. App. at 279, 304 S.E.2d at 806 and 313 N.C. at 429, 329 S.E.2d at 635. Since Ms. Truesdell was highly supervised and not likely to become

pregnant, sterilization was held to be unconstitutionally intrusive. [16]

Similarly, in In Matter of Welfare of Hillstrom, 363 N.W.2d 871 (Minn. App. 1985), the Minnesota Court of Appeals rejected the notion that sterilization could be ordered on a finding of "best interest," without a finding that it was the "last resort" and necessary to prevent an imminent danger of pregnancy. Shirley Hillstrom, because of health problems, could not use birth control pills. How-

16 Matter of Guardianship of Hayes, 93 Wash.2d 228, 608 P.2d 635 (1980) (sterilization may not be ordered without clear and convincing need for contraception based upon evidence of sexual activity under circumstances likely to result in pregnancy); North Carolina Association of Retarded Children v. North Carolina, 420 F. Supp. 451, 57 (D.N.C. 1976) (requiring evidence of likelihood of sexual activity without contraception because it "must have been the sense of the legislature to require only that which is necessary").

ever, like C.W., she was closely supervised and was not sexually active. The court concluded that a best interest standard, standing alone, inadequately protected Ms. Hillstrom's constitutional rights.

If C.W.'s case had been heard in North Carolina, Minnesota, or another State which precludes a finding of best interest unless sterilization is least restrictive, the petition would have been denied on federal constitutional grounds. The "best interest" analysis utilized by the court below elevated the focus upon C.W.'s medical condition, and bypassed the question of whether pregnancy is a realistic risk and trivialized the constitutional significance of less restrictive alternatives.

Thus, the same division which divides the States also divided the Court below.

The majority of the Superior Court of Pennsylvania made no effort to find a compelling need for sterilization and subordinated the requirement that sterilization be the least restrictive alternative to its subjective determination of what it believed to be C.W.'s "best interest." The dissent argued that sterilization would be unconstitutional unless shown to be the "least restrictive alternative" and supported by a compelling state interest, that is, necessary for the life or health of C.W. given her present circumstances. Accordingly, this case provides the Court with the ideal opportunity to choose between the various standards and to establish a uniform standard among the States.

C. The Least Restrictive Alternative Standard Is Required To Prevent Needless Sterilization of Individuals with Mental Retardation.

"Sterilization involves a surgical invasion of bodily integrity. It destroys an important part of a person's social and biological identity."[17] An individual's right to bodily integrity is fundamental, as is the right to procreative autonomy, regardless of whether the right will ever be exercised to beget a child.[18] A decision to surgically sterilize one of

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17 Matter of Romero, 790 P.2d 819, 821 (Colo. 1990).

18 See Conservatorship of Valerie N., 707 P.2d 760 (Cal. 1985), (Bird, Dissenting) at 784-7 (preservation of one's bodily functions is a fundamental right, and the termination thereof constitutes a serious invasion of the sanctity of the person). The dissent in Valerie N. ultimately prevailed, since the case was effectively overruled by statute. See West Ann. Cal. Prob. Code § 1950 (1991).

our fellow citizens, without her or his consent, is a decision to permanently deprive that person of "a basic liberty." Skinner v. Oklahoma, 316 U.S. at 541.

Permitting sterilization with only a judicial determination that it is in an individual's "best interests" permits judicial officers to impose on other individuals subjective judgments on contraception that society would not tolerate in any other circumstance. The "best interest" standard also permits courts to delegate extraordinary decision-making authority to surrogates without any objective limitations.

As this case demonstrates, without a strict standard to circumscribe a State's authority, decisions can easily be justified as in the individual's best interest, based upon stereotypical notions which

minimize or ignore altogether the importance of constitutional rights to people with disabilities. Decisions can also be manipulated to sacrifice fundamental rights in order to serve the convenience of a parent, guardian or social worker or the public at large in preference to the true interests of the individual. [19]

In this case, unless this Court intervenes, application of the subjective best interest standard will require C.W. to subject herself to a two day hospitalization, and isolation from familiar surroundings which can be upsetting even to people without retardation. She will

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19 Some courts, like the majority of the Superior Court below, have shown great deference to the preferences of parents and guardians of the incompetent individual; other courts have pointed out that these individuals have conflicting interests. See, e.g., In re Eberhardy, 307 N.W.2d at 896.

be required to undergo preoperative procedures, including blood work and intravenous and urinary catheterization. She will be subjected to general anesthesia and its attendant risks, and post-operative pain, without proof that she is truly at risk for pregnancy and despite proof that birth control pills and/or education, super-vision, and training are workable alter-natives.[20] In short, C.W. will be required to undergo a surgical procedure that almost certainly is unnecessary.

Roughly three percent of the population of the United States has been

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20 For most women, surgical sterilization is a much simpler procedure, sometimes even performed during an office visit under local anesthesia. C.W.'s seizure condition complicates matters, and will require general anesthesia and more intensive medical supervision.

diagnosed with mental retardation. Each of these individuals is potentially subject to a court petition for sterilization. We cannot know what fertility means to these individuals. Nor can we know what trauma an unnecessary surgical procedure will inflict. Only the most powerless members of our society are subject to such intrusions upon their persons. This Court must finally equalize their simple right to be left alone, "the most comprehensive of rights and the right most valued by civilized men". Olmstead v. United States, 227 U.S. 438, 478 (1927).

D. C.W. Is In No Imminent Danger Of Pregnancy And Less Restrictive Methods Are Available To Protect Her From Becoming Pregnant.

If the Constitution requires a court to find a compelling State interest and if sterilization must be the least restric-

tive alternative before it can be ordered, the order authorizing the sterilization of C.W. must be reversed. There is no compelling State interest because sterilization is not needed to prevent pregnancy. C.W. is not sexually active and is under constant supervision because of her seizure condition. The likelihood that she will become pregnant as a result of being sexually victimized is remote.

Moreover, sterilization is not the least restrictive approach to contraception. Birth control pills and other hormonal methods of contraception have not been tried, and there is no medical testimony that they would be unworkable.[21] Indeed, the expert witnesses favoring sterilization acknowledged that were it

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21 Tr. at 113-114, 231, 253-4; Tr. 8/17/89 at 67, 75; Guardian's Exhibit 11.

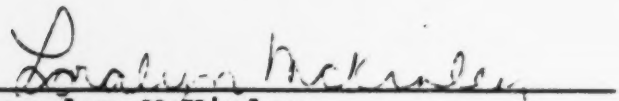
not for C.W.'s mental retardation, other medical facts remaining equal, they would not have recommended sterilization. See Trial Record at 110, 248, and Trial Record 8/17/89 at 59-60.

Should this Court grant this petition, petitioner will ask the Court to reverse the decision of the Superior Court of Pennsylvania and reverse the order of the trial court.

CONCLUSION

Petitioner accordingly requests that the Court grant certiorari in this case.

Respectfully submitted,



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